ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.428 OF 2007

IN

WRIT PETITION NO. 2974 OF 2005

M/s. Burhani Hospital ..Petitioner.

Vs.

Ms. Munira Bharmal ..Respondent.

Ms. Anjali Purav for the petitioner.

Mr. S.N. Deshpande for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 2nd NOVEMBER, 2007

P.C.

1. The petitioner-employer has taken out this notice of motion for recalling the order dated 21st November, 2005 whereby the Writ Petition was dismissed under Rule 986 of High Court, Original Side Rules, 1980.

2. As per the averments made, the petitioner is a charitable hospital. The Respondent was terminated. After hearing the parties, the labour Court in reference No. 277 of 2002 allowed the reference and directed the hospital to reinstate the respondent in service with full back wages. Therefore, the writ

petition was filed. The writ petition was dismissed for want of removal of office objection. The earlier advocate became ill and had to go out of Mumbai for treatment. Therefore, there is no communication to the petitioner about the matter.

3. On 04/08/2007 the petitioner received a letter dated 24/07/2007 from the Assistant Labour Commissioner about the proceedings under Section 33 C(2) for recovery as per the award. The petitioner, thereafter, made enquiry and found that the matter was already disposed of, for want of office objection.

4. The petitioner, thereafter has taken out this notice of motion basically on the foundation that there was no intention to delay the proceedings and on the contrary the petitioner has good case on merits.

5. The learned counsel appearing for the respondent, however, objected the restoration of the matter basically on the ground of latches and also submitted that the petition as filed on the Original Side itself, is not maintainable.

6. At this stage, without going further on the merit

on this aspect and keeping all this point open, I am convinced that there is a sufficient cause shown by the petitioner in filing this notice of motion for restoration as the same was immediately after the knowledge of the dismissal order.

7. However, the learned counsel appearing for the petitioner, further made a statement on instructions that they are willing to deposit Rs.1,22,500/- (Rupees one lac twenty two thousand five hundred only) towards the arrears of back wages within four weeks to show their bonafide in the matter.

8. The petitioner to also remove the office objection within four weeks.

9. Taking all this into account, the present notice of motion is allowed in terms of prayer clauses (a) and (b). However, it is subject to the costs of notice of Rs.3,000/- (Rupees three thousand only), to be paid within three weeks.

10. The writ petition is restored to file.

11. The notice of motion is disposed of, accordingly.

[ANOOP V. MOHTA, J.]